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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re JUAN GREER, on Habeas Corpus.	B223557 (Los Angeles County Super. Ct. No. BH006388)

APPEAL from a judgment of the Superior Court of Los Angeles County, Peter Paul Espinoza, Judge. Reversed.

Edmund G. Brown, Jr., Attorney General, Julie L. Garland, Senior Assistant Attorney General, Jessica N. Blonien, Supervising Deputy Attorney General, Jennifer Heinisch and Kathleen R. Frey, Deputy Attorneys General, for Appellant.

Brandie Devall for Respondent.

Respondent Juan Greer was convicted of murder in 1976. In February 2007, the Board of Parole Hearings (Board) denied Greer parole based on the heinousness of the crime, his juvenile history and his prison misconduct and gang activity. The trial court granted Greer's habeas petition, ruling that these immutable factors were not "some evidence" of current unsuitabilty for parole, and ordered the Board to conduct a new hearing. In February 2009, the Board held a hearing and granted Greer parole. The Governor reviewed the determination and on June 30, 2009, reversed it. Greer petitioned for habeas corpus. The trial court granted his petition. We find that some evidence supported the Governor's decision and reverse the trial court's ruling.

FACTUAL AND PROCEDURAL BACKGROUND

A. *Trial and Conviction*

Greer was convicted of first degree murder in 1976, when he was 17. According to the probation report, the victim, William Litten, an 18-year old high school student, was working as a gas station attendant when Greer and his codefendant, Tim Jones, robbed the station and forced Litten into their car. They drove to a vacant lot a few miles away where Litten was shot in the back and head six times.[1]

Two juvenile females who were in the car when the crimes occurred were given immunity from prosecution.[2] At the trial, they testified as follows: When

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[1] Litten was found conscious and in great pain. He died days later, having generally identified his attackers and their vehicle.

[2] Greer reported that Jones was living in the same home as the witnesses at the time of the crime.

the group arrived at the service station, Greer got out of the car, robbed Litten and forced him into the car at gunpoint. With Litten on his hands and knees under the dashboard, the group drove for about ten minutes. Litten was crying. Once the car stopped, Litten was forced outside, where Greer shot him multiple times. As Jones drove away, Greer emptied the remaining bullets from the gun and threw them out the window. One of the witnesses testified as they were driving to the location where Litten was shot, Greer complained that he had obtained only $35 from the robbery.

After one trial resulted in a hung jury, the jury in a second trial found Greer and Jones guilty of first-degree murder and found true the allegation that Greer personally used a firearm.

B. *Prior Juvenile Record*

Greer had a March 1973 juvenile adjudication for petty theft. In addition, he had been arrested and detained for (1) carrying a firearm without a license, grand theft and battery in May 1970; (2) grand theft in December 1970; (3) possession of marijuana in January 1973; (4) theft in August 1974; and (5) possession of marijuana, unlawful sexual intercourse and fraud in October 1974.[3] Greer admitted that he had snorted cocaine for two years prior to the murder and had smoked marijuana for four years prior.

C. *Conduct While Incarcerated*

During his incarceration, Greer was disciplined six times for serious rules violations, including displaying disrespect toward staff, having a positive urinalysis, assaulting another inmate, gambling, using force and violence and

[3] A petition was filed and dismissed for the October 1974 offenses.

contaminating food. The last such incident occurred in 1995. He was involved with a prison gang, the Black Guerilla Family, from 1982 to 1990. He was counseled for lesser misconduct 10 times, most recently in 1998.

While incarcerated, Greer also engaged in efforts to rehabilitate himself and enhance his ability to function in society. He graduated high school in 1981. He completed vocational training in customer service, dry cleaning, forklift operation, and office services and became a certified optician. He held institutional jobs as aide to the chief of psychology, dry cleaning worker, forklift operator, porter and toolroom clerk. He participated in numerous self-help programs, including Alcoholics Anonymous, Narcotic Anonymous, Fathers Behind Bars, anger management, peer and individual counseling, and youth outreach.[4] He received favorable evaluations from numerous correctional and mental health professionals.[5]

D. *Greer's Version of the Crime*

Immediately after his conviction, Greer refused to discuss the case, other than to inform the probation officer that codefendant Jones was his cousin. In

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[4] A 1999 psychological evaluation stated that from 1979 to 1981, Greer worked with a staff psychologist to develop the "Prison Orientation Program" which worked with juveniles to dispel myths about prison and prisoners; from 1992 to 1995, Greer developed another similar program called "Dacapaco"; from 1995 to 1998, Greer was the chairman of Convicts Reunite, Organize and Participate, another program aimed at reaching at-risk youth.

[5] At a 2007 parole hearing, the Board specifically noted that Greer had received "laudatory chrono[s]" from correctional officers for his participation in an alternatives to violence program and for "professionalism, skills, and respect in the performance of [his] duties." The Board further noted that he had received numerous laudatory chronos for his participation in Alcoholics Anonymous and anger management programs from 1999 to the date of the hearing, for his work as a forklift operator from 2002 to the date of the hearing, and for his involvement in other prison programs in 2004 and 2006.

March 1977, he told the Board that he was not present when the offense occurred. A few months later, in August 1977, Greer said he was present, but did not commit the murder and could not otherwise discuss the offense because an appeal was pending.

In 1981, Greer told a psychiatric evaluator that he was free to discuss the offense because his case was no longer on appeal. He gave a detailed statement, describing a day spent drinking and smoking marijuana with Jones, sometimes joined by other people. At some point during the day, Jones stopped and picked up the two females, whom Greer did not know. Greer said that Jones drove into the gas station, ostensibly because his car was losing hydraulic fluid. While Greer and the two women waited in the car, Jones got out, displayed a gun tucked into his belt, and brought Litten back to the car, where he directed him to get inside. Greer believed Jones intended to take Litten to an isolated area, beat him up and drop him off. Greer intervened and told Jones they would have to kill Litten because he could identify them and the car. Greer said they drove to a deserted area, where Jones let Litten out of the car and, after further discussion with Greer, shot him. Greer said that Jones regarded him as the leader and that there would have been no shooting had he (Greer) not intervened.

A year later, a 1982 psychiatric evaluation reported the following version of events: "[Greer] maintains that he did not shoot the victim, noting that his crime partner panicked and shot the victim after the robbery. His cousin was his crime partner. He agrees that he should be punished as a participant in the robbery but not as a murderer."

Two decades later, at a 2003 parole hearing, Greer reiterated that Jones, not he, was the shooter and that Jones, not he, got out of the car at the service station, confronted the victim, and brought him back to the car. Contradicting his earlier statement, Greer said that the first time he saw a gun was when Jones returned to

the car with Litten. He denied knowing why Jones had brought Litten back to the car. He noted that the car was Jones's and that the gun was found under its hood. He stated that it was Jones who stated his intention to drop Litten off, shoot him and leave, and that Greer concurred. He acknowledged, however, acting as a leader and took responsibility for encouraging Jones, or "egg[ing] [him] on" to shoot Litten.

At a 2007 parole hearing, Greer again said that it was Jones who got out of the car to commit the robbery and brought Litten back to the car. Greer again said he did not see a gun until Jones returned with Litten. At this hearing, Greer said it was he who told Jones to shoot Litten. Greer twice said that he did not realize a robbery had taken place until after Litten had been shot. When asked why, if Greer had no knowledge of the robbery, he had thought it necessary to kill Litten, Greer stated that it was because Jones had put Litten in the car and "it was obvious that we were involved in a crime."

In a 2008 interview with a psychiatric evaluator, Greer spoke briefly about the crime. He said he was not the shooter and that he did not force Litten into the car or know why Jones forced Litten into the car, but that the shooting occurred only because he told Jones to do it and because he did not have the "courage or will" to stop the crime. Greer said that at the time of the shooting, he and Jones "'were in a panic mode.'" Greer added that he was wrong not to tell his version of events in 1976, and that he did not speak out because he was following the advice of family members and because Jones was his cousin.

E. *Pre-2008 Psychological Evaluations*

The 1981 psychiatric evaluation stated that Greer was "clearly accepting much more responsibility and culpability in the crime . . . although he doesn't display much remorse[,] if any." The 1982 psychiatric evaluation stated that his

potential for violence was "diminished" but "greater than [for the] average man on the streets." Seventeen years later, in a 1999 psychological evaluation, the evaluator concluded that Greer's violence potential was no higher than the average citizen in the community. In 2003, the evaluator again stated that Greer's violence potential was no greater than that of the average citizen in the community and added that his risk of recidivism was low, provided he kept away from drugs. In 2007, the evaluator came to the same conclusion about Greer's potential for violence if released -- that it would be about the same as that of the average citizen. The 1999, 2003 and 2007 evaluators agreed that Greer had no mental disorder.

F. *2008 Psychological Evaluation*

In March 2008, Greer underwent his most recent psychological evaluation. The evaluation stated that Greer's essential version of events had remained the same -- he stated that he was not the shooter but had urged his companion to shoot the victim and did not have the courage or will to stop the crime. The evaluation further stated that Greer had no serious mental health problems and had been clean and sober since 1994.

The evaluator used specific diagnostic tools -- the "PCL-R" and "HCR-20" to assess future violence and the "LS/CMI" test for "an objective, actuarial assessment of the inmate's risk for general recidivism." Based on data from Greer's records and his "verbalizations in the current interview," the evaluator concluded that Greer's PCL-R score indicated a low level of "psychopathy" and that his HCR-20 score indicated a low propensity for violence.[6] With respect to the HCR-20 score, the report stated that although Greer's story had been consistent

[6] "Psychopathy" was defined as "a trait that has been linked to episodes of repetitive aggression and criminality."

over the years, "[t]here does continue to be a discrepancy between his account and the file account, which leave us with a certain level of unpredictability." The report further stated that "[d]espite this [discrepancy], the inmate is still in the low range [for propensity for violence]."

The report stated that Greer's LS/CMI score for risk of general recidivism, which the report also referred to as his "tendency to violate parole," was medium and that "elevations on this factor" were due to his prior juvenile arrest history, the fact he was first arrested when under the age of 16, the facts of his commitment offense, the prison misconduct, his problems in school, his family and criminal history, and his past use of alcohol and drugs. The report summarized the evaluator's conclusion as follows: "Mr. Greer is not a psychopath, which research indicates decreases his violence potential and chance of recidivism. The inmates' major elevations on this scale were due to his past criminal history and associated characteristics."

G. *Parole Board's 2009 Determination*

On February 2, 2009, the Board held a hearing and concluded that Greer was suitable for parole, that he would not pose an unreasonable risk of danger to society or a threat to public safety if released from prison, and that in general, "the positive aspects of [his] case heavily outweigh[ed] the other considerations." Preliminarily the Board found the commitment offense "horrendous" and "horrific," and described Litten being made to "lay on the floorboard between [Greer] and [his] crime partner like a dog," and abused "emotionally" and "physically" before being shot. The manner of committing the crime demonstrated that "[Greer] and [Jones] had absolutely no regard for human life at all," and the motive -- avoiding capture for a robbery of a small sum -- was described as "trivial." However, the Board recognized that the criminal actions occurred almost

34 years earlier and that since then Greer's "positive adjustment," "good insight," "tangibl[e] express[ion]" of remorse, and understanding of "the causative factors of [his] crime and of [his] criminality when [he was] young" showed that he had changed and no longer posed a risk of danger to society. The Board concluded that that despite the discrepancy between Greer's version of the crime and the testimony of the two female eyewitnesses at trial, it could not be said that Greer had minimized his culpability because he had repeatedly admitted telling Jones to shoot the victim. The Board found that Greer had been forthcoming about his responsibility for the crime in the more recent interviews and that he showed suitable remorse. The Board particularly lauded Greer's volunteer efforts with a program that assisted offenders to accept responsibility for their crimes and helped survivors to overcome some of the hurt caused by the crime. The Board further found that Greer's parole plans -- to live with an aunt in Pacoima and to work for his father detailing cars -- were "realistic."[7] The presiding commissioner stated on the record that he and the other members of the Board had a total of 60 years of correctional experience between them and that their lengthy experience made them "pretty good judge[s] of knowing whether somebody's playing [them]." Based on that experience, both believed Greer's remorse was genuine. The other Board member discussed Greer's "numerous laudatory chronos from correctional officers that [had] see[n] [his] daily activity," and stated that the opinion of the officers who had known him for "six, seven, ten years," was an important factor to him in reaching his conclusion concerning the appropriateness of parole.

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[7] The Board found that Greer had other job offers, including an offer to be a forklift operator in Irwindale, and other offers of residence, including one from his wife in King City and one from his mother and sister in Colorado.

H. *Governor's Decision*

The Governor reviewed and reversed the Board's determination, giving four reasons for his decision. The first was that the crime was "especially heinous." In this regard, the Governor particularly emphasized the Board's statements that Litten was forced to lie on the floorboard "'like a dog,'" that Greer and Jones "'had absolutely no regard for human life at all,'" and that the motive was "trivial."

The second reason given was that Greer "minimize[d] his responsibility for the murder" and "seem[ed] to still lack insight into his responsibility for the crime." To support this finding, the Governor cited Greer's various statements about the crime over the years, including the March 1977 statement that he was not present; the August 1977 statement that he was present, but did not commit the crime; the 1981 statement that he told Jones to kill the victim; the 1982 statement that Jones panicked and killed the victim; and the statement at the 2007 parole hearing that he was not aware of the robbery until Jones was driving away from the shooting. The Governor also relied on the fact that Greer's version of events was inconsistent with the eyewitnesses' account at trial. Two eyewitnesses testified that Greer had the gun and used it to rob Litten, forced him into the car and shot him in the back and head. The jury found that Greer, not Jones, had personally used a firearm. The Governor found these discrepancies indicative of Greer's refusal to accept responsibility for his actions and demonstrated that he did not fully understand the circumstances that led to the crime. The Governor concluded that Greer could not "ensure that he will not commit similar crimes in the future if he does not fully understand and accept responsibility for his prior criminal conduct."

The third reason given by the Governor for reversing the Board's determination was the 2008 psychological evaluation. The Governor stated that the evaluation "raise[d] additional concerns" because "[a]lthough the evaluator

rated Greer's overall propensity for future violence in the 'low range when compared to similar inmates,' the evaluator also noted that '[t]here does continue to be a discrepancy between his account and the file account, which leaves us with a certain level of unpredictability.'" The Governor also described the report as assessing "both Greer's general risk of recidivism and his likelihood to violate parole in the medium range" and stated: "The fact that the 2008 evaluation rated [Greer] in the medium range in two separate categories related to reoffending and violating his parole indicates to me that he still poses an elevated risk of recidivism."

The final reason given for reversal of the Board was concern about Greer's post-imprisonment residence plans. The Governor stated that Greer "made plans to live and work with his father [an ex-prisoner] in Los Angeles County" and that this plan "may not provide him with the level of support he needs after 34 years of incarceration."

I. *Trial Court's Grant of Habeas Petition*

Greer petitioned for a writ of habeas corpus. The trial court granted the petition, concluding there was no evidence to support the Governor's decision to overturn the Board. The court concluded that due to the age of the offense and defendant's 15 years of discipline-free conduct, the commitment offense did not continue to indicate a current risk of violence.

Concerning the Governor's finding that Greer lacked insight, the court found that "[Greer's] disagree[ment] with the official account of the offense is not 'some evidence' that he is currently dangerous."

Turning to the 2008 psychological evaluation, the court preliminarily found that the Governor had misread the report as stating that Greer posed a "medium" risk in two areas: "general recidivism" and "violating parole." The court pointed

out that the evaluator used those two terms for the same factor and that, therefore, Greer posed a "medium" risk in only one area. Moreover, the court concluded the evaluator's finding that Greer was a medium risk in that area (general recidivism/violating parole) was deficient because the evaluator relied on outdated information -- Greer's juvenile record and the institutional misconduct, the last instance of which had occurred more than a decade earlier.

Turning to the Governor's concern over Greer's residence plans, the court pointed out that the Governor had again misread the record, and that there was no evidence that Greer intended to live with his father. The court ordered Greer released forthwith pursuant to the conditions set forth in the Board's February 2, 2009 determination. This appeal followed.

DISCUSSION

A. *Factors Governing Board's and Governor's Parole Determination and Standard of Judicial Review*

Under the applicable statutes and regulations -- Penal Code section 3041 and title 15, section 2402 of the California Code of Regulations -- "'the Board is the administrative agency within the executive branch that generally is authorized to grant parole and set release dates.'" (*In re Shaputis* (2008) 44 Cal.4th 1241, 1256 (*Shaputis*).) Under Penal Code section 3041, "'the Board must set a parole date for a prisoner unless it finds, in the exercise of its judgment after considering the circumstances enumerated in section 2402 of the regulations, that the prisoner is unsuitable for parole. [Citation.]'" (*Shaputis,* at p. 1258, quoting *In re Rosenkrantz* (2002) 29 Cal.4th 616, 654 (*Rosenkrantz*).) Suitability for parole turns on "whether the inmate poses 'an unreasonable risk of danger to society if released from prison.'" (*In re Lawrence* (2008) 44 Cal.4th 1181, 1202 (*Lawrence*).)

Section 2402 sets forth the factors to be considered by the Board in guiding its assessment of whether the inmate poses an unreasonable risk of danger to society if released from prison. Under its provisions, the Board is to consider "the circumstances of the prisoner's social history; past and present mental state; past criminal history, including involvement in other criminal misconduct which is reliably documented; the base and other commitment offenses, including behavior before, during and after the crime; past and present attitude toward the crime; any conditions of treatment or control, including the use of special conditions under which the prisoner may safely be released to the community; and any other information which bears on the prisoner's suitability for release." (Cal. Code. Regs., tit. 15, § 2402, subd. (b).) The regulations lists numerous factors indicative of unsuitability for parole, including (1) a commitment offense carried out in an "especially heinous, atrocious or cruel manner";[8] (2) a "[p]revious [r]ecord of [v]iolence"; and (3) "[t]he prisoner has engaged in serious misconduct in prison or jail." (*Id.*, subd. (c); see *Shaputis*, *supra*, 44 Cal.4th at p. 1257, fn. 15.) The regulations also list factors indicative of suitability for parole, including: (1) the absence of a juvenile record; (2) "reasonably stable relationships with others"; (3) signs of remorse; (4) the lack of "any significant history of violent crime"; (5) "[t]he prisoner's present age reduces the probability of recidivism"; (6) "[t]he prisoner has made realistic plans for release or has developed marketable skills that

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[8] "Factors supporting a finding that the inmate committed the offense in an especially heinous, atrocious, or cruel manner include the following: (A) multiple victims were attacked, injured, or killed in the same or separate incidents; (B) the offense was carried out in a dispassionate and calculated manner, such as an execution-style murder; (C) the victim was abused, defiled, or mutilated during or after the offense; (D) the offense was carried out in a manner that demonstrates an exceptionally callous disregard for human suffering; and (E) the motive for the crime is inexplicable or very trivial in relation to the offense." (*Shaputis*, *supra*, 44 Cal.4th at p. 1257, fn. 15, quoting [Cal. Code.] Regs., [tit.15,] § 2402, subd. (c)(1).)

can be put to use upon release"; and (7) the inmate's "[i]nstitutional activities indicate an enhanced ability to function within the law upon release." (Cal. Code. Regs., tit. 15, § 2402, subd. (d); see *Shaputis*, *supra*, at p. 1257, fn. 16.)

The California Constitution grants the Governor the power to review the Board's parole decisions.[9] "Although 'the Governor's decision must be based upon the same factors that restrict the Board in rendering its parole decision' [citation], the Governor undertakes an independent, de novo review of the inmate's suitability for parole. [Citation.] Accordingly, the Governor has discretion to be 'more stringent or cautious' in determining whether a defendant poses an unreasonable risk to public safety." (*Shaputis*, *supra*, 44 Cal.4th at p. 1258, quoting *Rosenkrantz*, *supra*, 29 Cal.4th at pp. 660, 686.)

When the Governor reviews a grant of parole, "he sits as the trier of fact and may draw reasonable inferences from the evidence." (*In re Smith* (2009) 171 Cal.App.4th 1631, 1639.) "[T]he Governor's interpretation of a documentary record is entitled to deference," and "[courts] will affirm the Governor's interpretation of the evidence so long as that interpretation is reasonable and reflects due consideration of all relevant statutory factors." (*Shaputis*, *supra,* 44 Cal.4th at p. 1258.) The standard is "deferential," but "not toothless." (*Lawrence*,

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[9] Article V, section 8, subdivision (b) provides: "No decision of the parole aruthority of this state with respect to the granting, denial, revocation, or suspension of parole of a person sentenced to an indeterminate term upon conviction of murder shall become effective for a period of 30 days, during which the Governor may review the decision subject to procedures provided by statute." Penal Code section 3041.2, subdivision (a) provides: "[T]he Governor, when reviewing the authority's decision pursuant to subdivision (b) of Section 8 of Article V of the Constitution, shall review materials provided by the parole authority. [¶] (b) If the Governor decides to reverse or modify a parole decision of a parole authority pursuant to subdivision (b) of Section 8 of Article V of the Constitution, he or she shall send a written statement to the inmate specifying the reasons for his or her decision."

supra, 44 Cal.4th at p. 1210.) The Governor's decision must reflect "'due consideration of the specified factors as applied to the individual prisoner in accordance with applicable legal standards.'" (*Ibid*., quoting *Rosenkrantz*, *supra*, 29 Cal.4th at p. 677, italics omitted.) "'[D]ue consideration' of the specified factors requires more than rote recitation of the relevant factors with no reasoning establishing a rational nexus between those factors and the necessary basis for the ultimate decision -- the determination of current dangerousness." (*Ibid*.) "[B]ecause the paramount consideration for both the Board and the Governor under the governing statutes is whether the inmate currently poses a threat to public safety, and because the inmate's due process interest in parole mandates a meaningful review of a denial-of-parole decision, the proper articulation of the standard of review is whether there exists 'some evidence' that an inmate poses a current threat to public safety, rather than merely some evidence of the existence of a statutory unsuitability factor." (*Shaputis*, *supra*, at p. 1254.)

"'[T]he [Governor] is responsible for articulating the grounds for [his] findings and for citing to evidence supporting those grounds.'" (*In re Burdan* (2008) 169 Cal.App.4th 18, 35, quoting *In re Roderick* (2007) 154 Cal.App.4th 242, 265.) "'We . . . confine our review to the stated factors found by the [Governor], and all the evidence presented at the parole hearing which is relevant to those findings'" and do not infer from the evidence findings the Governor "'might have made.'" (*In re Burdan*, *supra*, at p. 35, quoting *In re DeLuna* (2005) 126 Cal.App.4th 585, 593-594.)

Under the applicable standard, we find the Governor's decision to reverse the Board's grant of parole supported by some evidence.

B. *Psychological Evaluation and Parole Plans*

Preliminarily, we agree with the trial court that the Governor misread the factual record concerning the 2008 psychological evaluation and Greer's parole plans. The Governor stated that the 2008 evaluation "rated [Greer] in the medium range in two separate categories" when, in fact, it rated Greer's psychopathy and propensity for violence in the low range based on the PCL-R and HCR-20 diagnostic tools and rated him medium in the combined category of "general recidivism" and "tendency to violate parole" based on the LS/CMI diagnostic tool. In addition, the Governor concluded that the evaluation "raise[d] . . . concerns" about Greer's propensity for future violence because the evaluator referred to the "discrepancy between [Greer's] account and the file account, which is not reconcilable." However, the evaluator went on to state that "[d]espite this [discrepancy], [Greer] is still in the low range [for propensity for violence]." Accordingly, the 2008 evaluation, correctly read, does not support a finding of elevated propensity for violence, as the Governor suggests.[10]

The Governor also stated that his reversal of the Board's decision was based in part on Greer's "plan to live with his father." As the record before the Board makes clear and the trial court found, Greer had no such plans.

Although the Governor's findings were not supported in these two areas, we are bound to affirm if there is "a modicum of evidence" in the record to support the Governor's conclusion. (*Lawrence*, *supra*, 44 Cal.4th at p. 1226.) Under this standard, we conclude the Governor's finding of unreasonable risk of danger to society is supported by the nature of the crime and Greer's lack of insight.

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[10] As noted above, since at least 1999, Greer's psychological evaluations have been favorable, particularly with respect to his overall mental health and lack of propensity for violence.

C. *Nature of Crime and Lack of Insight*

No one could dispute that the crime committed by Greer was heinous. The murder was committed for the trivial purpose of avoiding detection for stealing a few dollars. The victim, only 18, was kidnapped from his place of employment, forced to lie at Greer's feet and driven to an isolated area where he was murdered, execution style, by multiple gunshots to his back and head. The evidence showed that at the time, Greer and his codefendant were "'completely devoid of any human compassion'" and "'had absolutely no regard for human life at all,'" as the Governor and the Board stated. As the Supreme Court has recognized, however, "there are few, if any, murders that could not be characterized as either particularly aggravated, or as involving some act beyond the minimum required for conviction of the offense" and an inquiry which focuses on these factors provides neither an accurate predictor of the inmate's current dangerousness nor "a workable standard for judicial review." (*Lawrence, supra*, 44 Cal.4th at p. 1218, italics omitted.) "[M]ere recitation of the circumstances of the commitment offense . . . fails to provide the required 'modicum of evidence' of unsuitability [for parole]." (*Id*. at p. 1227.) Indeed, "'a policy of rejecting parole solely upon the basis of the type of offense, without individualized treatment and due consideration, deprives an inmate of due process of law.'" (*Id*. at p. 1210, quoting *Rosenkrantz, supra*, 29 Cal.4th at p. 684.)

The relevant inquiry for purposes of a parole suitability determination, according to the Supreme Court, is whether the circumstances surrounding the commitment offense "considered in light of other facts in the record, are such that they continue to be predictive of current dangerousness many years after commission of the offense." (*Lawrence, supra*, 44 Cal.4th at p. 1221.) The inquiry is, "by necessity and by statutory mandate, an individualized one" and requires "consideration of the passage of time [and] the attendant changes in the

inmate's psychological or mental attitude" or "maturity, understanding, and mental state." (*Id*. at pp. 1219-1220, 1221.) In *Lawrence*, the Supreme Court concluded that the egregiousness of the offense is a valid indicator of whether the prisoner is a danger to the public "at or around the time of his or her commission of the offense" and "may continue to be probative of the prisoner's dangerousness for some time in the future." (*Id*. at p. 1219, italics omitted.) Certain offenses may be so "'heinous, atrocious or cruel' that an inmate's due process rights would not be violated if he or she were to be denied parole on the basis that the gravity of the conviction offense establishes current dangerousness," but only where "the inmate has failed to make efforts toward rehabilitation, has continued to engage in criminal conduct post incarceration, or has shown a lack of insight or remorse." (*Id*. at p. 1228.) In such situations, "the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness even decades after commission of the offense." (*Ibid*.)

The Governor found that Greer lacked insight into his responsibility for the crime and did not fully understand and accept responsibility for his prior criminal conduct. An inmate's lack of insight into his or her criminal behavior or failure to take full responsibility for the crime committed may provide the required nexus between the commitment offense and the inmate's current dangerousness. (See *Lawrence*, *supra*, 44 Cal.4th at p. 1228 ["In some cases, such as those in which the inmate has . . . shown a lack of insight or remorse, the aggravated circumstances of the commitment offense may well continue to provide 'some evidence' of current dangerousness"]; *Shaputis*, *supra*, 44 Cal.4th at p. 1261, fn. 20 ["[P]etitioner's failure to take full responsibility for past violence, and his lack of insight into his behavior, establish that the circumstances of petitioner's crime and violent background continue to be probative to the issue of his current dangerousness."]; *In re Taplett* (Aug. 17, 2010) ___ Cal.App.4th ___ [2010 Cal.App.LEXIS 1591, at

*19] [Upholding Governor's reversal of Board's grant of parole, finding "[the inmate's] failure to accept the full extent of her responsibility for the murder . . . renders the circumstances of that offense relevant to her current level of dangerousness."]; *In re Rozzo* (2009) 172 Cal.App.4th 40, 61-62, fn. 9 [where record contained ample evidence of inmate's direct participation in victim's killing, his denial of direct participation evinced a lack of insight into the reasons he committed the murder: "While it is improper to rely on a prisoner's refusal to address the circumstances of the commitment offense in denying parole, evidence that demonstrates a prisoner's insight, or lack thereof, into the reasons for his commission of the commitment offense is relevant to a determination of the prisoner's suitability for parole."]; *In re Smith, supra,* 171 Cal.App.4th at p. 1639 ["The gravity of [the inmate's] commitment offense has continuing predictive value as to current dangerousness in view of her lack of insight into her behavior and refusal to accept responsibility for her personal participation in the beating of [the victim]."]; but see *In re Aguilar* (2008) 168 Cal.App.4th 1479, 1491, citing § 5011, subd. (b) [parole cannot be conditioned on an admission of guilt to the crime].)

In his conclusion that Greer lacked insight and understanding into his responsibility for the crime and failed to accept responsibility, the Governor relied on information pertinent to Greer's current state of mind: (1) the major discrepancies between his version of events and the version the witnesses testified to at trial and the jury found true; and (2) his 2007 attempt to minimize culpability by denying knowledge of the robbery.

Greer's version of events differed substantially from that of the two eyewitnesses who identified Greer as the shooter at trial and from the jury's verdict and findings, specifically, that Greer -- not Jones -- personally used a firearm. The Governor found Greer's version of events, including that Jones was the shooter,

not credible and that Greer was continuing to minimize his responsibility for the murder. Accordingly, the Governor concluded that Greer continues to lack true insight and remorse. In reviewing the documents and other information before the Board, the Governor is "free to make his own credibility determinations." (*In re Tripp* (2007) 150 Cal.App.4th 306, 318.) As the Governor's decision was based on a credibility determination, we are bound by that determination as long as it is supported by some evidence or by reasonable inferences arising from the evidence. (*Ibid.*; *Rosenkrantz, supra,* 29 Cal.4th at pp. 676-677.)

Moreover, even crediting Greer's version of events with respect to Jones being the shooter, as recently as 2007, Greer maintained that notwithstanding his role as "leader" in the offense, he was unaware that a robbery had taken place until the point at which he and his crime partner agreed to shoot the victim. Although when challenged, he acknowledged knowing that he had been involved in "a crime," this was a significant change from his original story that he had been the "leader" and that he could justifiably be held accountable for the robbery. As the cases cited above acknowledge, an inmate's failure to come to terms with the commitment offense, coupled with continuing efforts to minimize the nature of the inmate's participation in the crime, even while acknowledging responsibility, may be viewed as evidence of a lack of insight. Our Supreme Court has recognized that an inmate's lack of insight may establish that the circumstances of the crime continue to be "probative to the issue of his current dangerousness." (*Shaputis, supra*, 44 Cal.4th at p. 1261, fn. 20.) We cannot say that the Governor, sitting as the trier of fact, was not entitled to conclude that Greer had failed to acknowledge the extent of his participation in an execution-style murder and had minimized his role by presenting a story that strained credulity. In light of the strong deference due the Governor's determination of what weight to attribute to factors relevant to assessing current dangerousness, we cannot say the record is devoid of some

evidence to support his decision. (See *In re Criscione* (2009) 173 Cal.App.4th 60, 74 [under appropriate standard of review, court may not reweigh evidence].)

DISPOSITION

The judgment granting the petition for habeas corpus is reversed.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MANELLA, J.

We concur:

EPSTEIN, P. J.

SUZUKAWA, J.